

SUPERFUND STATE CONTRACT
BETWEEN
THE STATE OF NEW JERSEY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
FOR REMEDIAL ACTIVITIES RELATED TO THE
RARITAN BAY SLAG SUPERFUND SITE
IN THE STATE OF NEW JERSEY

393229



A. Authority

This Superfund State Contract (the "Contract") is entered into pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601 *et seq.*

B. Purpose

This Contract is an agreement between the United States Environmental Protection Agency ("EPA") and the State of New Jersey (the "State") to conduct remedial activities at the Raritan Bay Slag Superfund site (the "Site") located in the Townships of Old Bridge and Sayreville, Middlesex County, New Jersey.

Attached and incorporated herein as Appendix A is a description of the Site. This Contract covers Task I of the activities described in the Statement of Work (the "SOW") attached hereto and incorporated herein as Appendix B. This Contract may be amended pursuant to Paragraph N to undertake additional remedial activities beyond Task I of the SOW.

C. Parties' Representatives

1. EPA has designated Michael Sivak, Acting Chief, Special Projects Branch, United States Environmental Protection Agency - Region 2, 290 Broadway, New York, New York 10007-1866, (212) 637-4310 to serve as EPA Project Officer for this Contract.
2. The State has designated Edward Putnam, Assistant Director, Publicly Funded Response Element, Remediation Management Division, New Jersey Department of Environmental Protection, Mail Code: 401-05Q, P.O. Box 420, Trenton, New Jersey 08625-0420, (609) 984-3074, to serve as the State Project Officer for this Contract.

D. Procurement

The EPA shall employ contractors and/or the U.S. Army Corps of Engineers (COE) to do the work described in Task I of the SOW and shall make all payments to the contractors and/or the COE for that work.

E. Financial Responsibilities of the Parties and Payments

1. EPA shall contribute 90 percent of the costs of Task I, provided, however, that it shall not be required to contribute more than \$12,780,000 for Task I unless this Contract is amended in writing to provide for a higher limit on expenditures for the work covered by this Task. The State shall contribute 10 percent of the cost of Task I, provided, however, that it shall not be required to contribute more than \$1,420,000 for Task I unless this Contract is amended to provide for a higher limit on expenditures for the work covered by this Task. Expenditures by EPA of the funds contributed by the State shall not ensure actions at the Site beyond those specified in this Contract.
2. EPA and the State each shall, in addition to its contributions to the costs of the work described in the SOW as specified above, be responsible for furnishing the personnel, materials, services and facilities necessary for or incidental to the performance of its other obligations under the Contract, except as covered

by a separate support agency (management assistance) cooperative agreement.

3. Payment Schedule. The State shall make its payments for construction costs under this agreement according to the following terms and conditions:

- a. The State shall make its payments for construction costs in accordance with the Payment Schedule Table (Attachment 1 to Appendix B), which identifies the payment events and the amounts due for each Task. The State shall pay EPA the amount associated with a completed Payment Event within sixty (60) days of the submission of an invoice to the State by EPA after commitment of federal funds.

- b. Payments outstanding on the attached Payment Schedule Table (Attachment 1 to Appendix B) that are due on the same date may be combined.

- c. After the final total cost is determined and supporting documentation is provided to the State as provided in Paragraph E.4, final payment by or reimbursement to the State will be made as follows:
- i. If the State statutory share of the final total cost is greater than the amount provided to EPA under subparagraph E.3.a, the State shall pay the balance of its statutory share within sixty (60) days of submission of an invoice to the State by EPA.
 - ii. If the State statutory share of the final total cost is less than the amount provided to EPA under subparagraph E.3.a, EPA agrees to reimburse any such overpayment to the State within sixty (60) days after State submission of an invoice for reimbursement for these excess funds, subject to the availability of federal funds..

4. Within sixty (60) days of the date EPA makes the final payments to the contractors and/or the COE for the work described in Task I of the SOW, EPA shall calculate a final total cost for that work. The final total cost will be the sum of all payments to the contractors and/or the COE for that work. EPA shall give the State Project Officer notice of the final total cost promptly after calculating the cost, and simultaneously shall give the Project Officer copies of the invoices or other documentation supporting said cost.
5. The instruments of payment by the State shall be made payable to "USEPA - Hazardous Substances Superfund" and shall be sent to:

U.S. Environmental Protection Agency

Superfund Payments

Cincinnati Finance Center

P.O. Box 979076

St. Louis, Missouri 63197-9000

The State shall enclose identification with the instrument of payment stating the Site for which

payment is being made and whether payment is for a state statutory share.

6. All EPA refunds to the State shall be made payable to "Treasurer, State of New Jersey" and shall be sent to:

New Jersey Department Environmental Protection
Budget and Finance

P.O. Box 420

Trenton, New Jersey 08625-0420

Attention: Director

7. If the parties amend this Contract to include any additional work as part of Task I beyond that already specified in that Task of the SOW, the final total cost of the work shall be calculated and applied in the same manner as specified for this Task.

F. Duration

This Contract shall become effective upon execution by both parties and shall remain in effect until December 31, 2020, or until completion of the activities described in the SOW

whichever occurs later. Pursuant to Paragraph N, the parties may agree to extend, by amendment, the duration of the Contract for the period necessary to implement any response activities that the parties agree to undertake beyond those defined in the SOW.

G. Off-site Storage, Destruction, Treatment or Disposition

1. Should EPA determine that off-site storage, destruction, treatment, or disposition (collectively, "Off-site Disposition") of hazardous substances is required for implementation of Task I of the SOW, it shall attempt to arrange for such Off-site Disposition, provided, however, that ultimate responsibility to arrange for Off-site Disposition rests with the State. In the event that EPA is unable to arrange for such Off-site Disposition, the State shall, at EPA's request, make available a hazardous waste disposal facility which has adequate capacity and which meets the requirements of 42 U.S.C §96219d) (3). The State agrees to furnish all legal and technical assistance necessary to accomplish such Off-site Disposition.

Failure of the Parties to arrange for such Off-site Disposition shall be cause for termination of this Contract.

2. EPA's 2014 National Capacity Assessment shows that there is adequate national capacity for the treatment and disposal of hazardous waste through the year 2039. This assessment included 2011 Biennial Report data provided by the State. Based upon the assessment and other data, as appropriate, EPA expects that there will be adequate national hazardous treatment and disposal capacity during the 20-year period following signature of this SSC. The State hereby assures availability of hazardous waste treatment or disposal facilities for the next 20 years, following signature of this SSC, pursuant to CERCLA 104(c)(9), 42 U.S.C §9604(c)(9). In order to ensure the continued availability of capacity for the treatment and disposal of hazardous waste, the State agrees to work with EPA to meaningfully participate in the national capacity planning process and any activities needed to either identify shortfalls in capacity or to address any identified shortfalls.

H. Maintenance

The parties do not anticipate the need for any Maintenance (for the purpose of this Contract, the term "Maintenance" shall mean operating, repairing, servicing, environmental monitoring or any other activity necessary to insure normal performance and continuation in a good and serviceable condition), including Maintenance of facilities constructed under Task I. Pursuant to 42 U.S.C. §9604(c)(3), as amended, if any Maintenance is necessary, the State shall assure all future Maintenance during the expected life of Task I, which will be determined by amendment.

I. Permits

In accordance with 42 U.S.C. §9621(e) and 40 CFR 300, federal, state, and local permits are not required for on-site Fund-financed remedial actions. Subject to the provisions of 42 U.S.C. Section 9621, EPA shall, however, attain or exceed applicable or relevant and appropriate federal, state or local public health or environmental requirements that have been identified for this Site consistent with the Record of Decision. Remedial actions which involve the storage, treatment or disposal of

hazardous substances at off-site facilities shall involve only off-site facilities that are operating under appropriate federal and state permits or authorization and other legal requirements.

J. Site Access

1. EPA shall attempt to secure access to the Site for itself, its agents and representatives, and for contractors performing the work described in the SOW. The State, however, shall assist EPA as requested, and shall retain to the extent of its legal authority the responsibility for obtaining Site access if EPA efforts are not successful.
2. With reasonable advance notice to the EPA Project Officer, and upon condition that they comply with any Site safety plan then in effect, employees and other representatives of the State shall have access to the Site.

K. Acquisition of Interests in Real Property

To the extent that any interests in real property are necessary for performance of this Contract and if such interests have not been acquired by the State, EPA shall use its best efforts to acquire such interests. The State agrees to accept transfer of such interests following completion of the remedial action, in accordance with CERCLA. The cost of acquiring such interest in real property shall be paid for as provided in paragraph E.1. Further, the State agrees to furnish all legal and technical assistance necessary to accomplish such acquisition by EPA. Nothing in this Contract shall impair or otherwise affect the right of the United States or the State to file any lien(s) on the real property which is the subject of this Contract pursuant to the provisions of SARA or pursuant to any other statutory or equitable grounds.

L. Information Regarding the Site

1. At EPA's request, and to the extent allowed by State law, the State shall make available to EPA any infor-

mation in its possession concerning the Site, with the exception of deliberative and policy documents which the State would not otherwise be required to disclose, including those documents subject to the attorney - client privilege. At the State's request, and to the extent allowed by federal law, EPA shall make available to the State any information in its possession concerning the Site, with the exception of deliberative and policy documents which the EPA would not otherwise be required to disclose, including those documents subject to the attorney - client privilege.

2. If any information is provided to EPA by the State under a claim of confidentiality, it will be treated in accordance with 40 CFR Part 2 if the State has given EPA notice of the claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by federal law and has given the State ten (10) working days advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make

said information available to the public without further notice.

3. If any information is provided to the State by EPA under a claim of confidentiality, it shall be treated in accordance with State law if EPA has given the State notice of the claim of confidentiality. The State shall not disclose information submitted under a claim of confidentiality unless the State is required to do so by State law and has given EPA ten (10) working days advance notice of the State's intent to release that information. Absent notice of such claim, the State may make said information available to the public without further notice.

M. Failure to Comply with Terms of Contract

1. If the State fails to comply with the terms of this Contract, EPA may proceed under the provisions of 42 U.S.C. §9604.

2. If EPA fails to comply with the terms of this Contract, no action for damages or any other form of remedy shall be commenced until the State has given EPA sixty (60) days written notice of intent to file suit.

N. Amendments

Any change in this Contract must be agreed to by both parties in writing.

O. Community Relations Plan

EPA has developed and implemented a Community Relations Plan.

P. Third Parties

1. This Contract is intended to benefit only the State and EPA. It extends no benefit or right to any third party.
2. Neither EPA nor the State assumes any liability to third persons with respect to losses due to bodily

injury or property damages resulting in any way from work performed in connection with this Contract, nor does either party waive any rights or immunities provided by law.

3. The execution of this Contract does not constitute a waiver of EPA's right to bring an action against any person or persons for appropriate relief under any provision of CERCLA or any other provision of law.
4. The execution of this Contract does not constitute a waiver of the State's right to bring an action against any person or persons for appropriate relief under any applicable State or federal law.

Q. Enforcement and Cost Recovery

1. **Disclaimer of Agency Relationship**

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures or protocols prescribed in this

Contract to be followed by EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by this Contract and do not constitute a right to control the actions of the EPA. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract and the State (including its employees and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to the subject matter of this Contract.

2. **Notice of Intent to Settle or to Initiate Proceedings**

EPA and the State agree that, with respect to the claims which each may be entitled to assert against any third person (herein referred to as the "responsible party," whether one or more) for response activities at the Site described in this Contract, neither EPA nor the State will commence settlement negotiations with a responsible party except after having given prior written notice to the other party to this Contract in

advance of the commencement of settlement negotiations, nor will EPA or the State enter into a settlement with, or initiate a judicial or administrative proceeding against, a responsible party except after having given notice in writing to the other party to this Contract not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings.

Neither party to this Contract shall attempt to negotiate on behalf of the other party, and authority to do so is hereby expressly negated and denied.

3. **Cooperation and Coordination in Enforcement and Cost Recovery Efforts**

EPA and the State agree that they will cooperate and coordinate efforts to recover their respective costs for response actions taken at the Site described herein, including settlement negotiations and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses and in the preparation and presentation of any enforcement

or cost recovery action. Any documents or information which may be confidential under the provisions of any applicable State or federal law or regulation may be withheld notwithstanding the terms of this paragraph.

4. **Judicial Action**

EPA and the State agree that any judicial action taken pursuant to CERCLA by either party against a potentially responsible party for recovery of any sums expended in response actions at the Site described herein shall be filed in the United States District Court for the judicial district in which the Site is located, or in such other judicial district of the United States as may be authorized by 42 U.S.C. §9613 and agreed to in writing by the parties to this Contract.

5. **Assumption of Work by Responsible Party**

- a. If any responsible party notifies EPA in a timely manner of its willingness to perform the activities delineated in the Statement of Work attached hereto, and any amendments thereto, EPA

shall immediately notify the State of such offer and, after consultation with the State, will determine whether to offer the responsible party the opportunity to undertake the work. If EPA decides to make such an offer, it shall notify the State in writing of that fact. EPA then will provide the responsible party with a detailed work plan identifying the work to be performed. The responsible party shall have two (2) weeks in which to review the detailed work plan and to indicate its desire to undertake the activities described therein. If EPA, after consultation with the State, determines that the responsible party is capable of properly and promptly performing the work, it may enter into an agreement with the responsible party for the work.

- b. If EPA determines that the responsible party is unable or unwilling to perform any of the activities of the Statement of Work in a manner acceptable to EPA, EPA will promptly so notify the State in writing.

- c. Each party recognizes that any agreement it executes with a responsible party pursuant to this paragraph shall not be construed to waive or limit such rights as the other party may have to enter into a different settlement with, initiate a judicial or administrative proceeding against, or assert any claims against said responsible party consistent with such laws, regulations and policies as may apply to the performance of remedial measures at the Site.

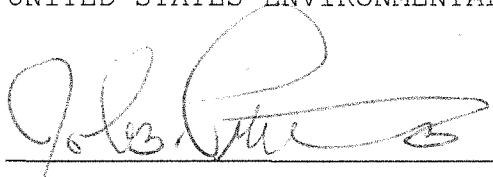
- d. If EPA enters into a settlement with a responsible party to undertake the work covered by Task I of the SOW after the State has paid its statutory cost share, as defined in paragraph E.1., EPA will reimburse the State for such costs within sixty (60) days after State submission of an invoice for reimbursement for these funds, subject to the availability of federal funds.

6. **Evidence Documentation**

EPA shall implement the standard agency protocol for the documentation of evidence at the Site.

In witness whereof, the parties hereto have executed this
Contract for remedial activities at the Raritan Bay Slag
Superfund Site in two (2) copies, each of which shall be deemed
an original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

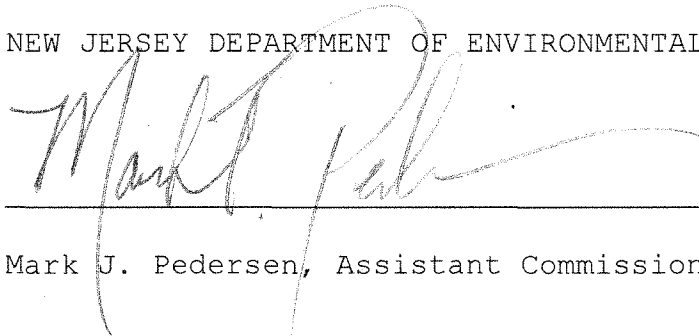


For
Walter E. Mugdan, Director
Emergency and Remedial Response Division

7/14/16

Date

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION



Mark J. Pedersen, Assistant Commissioner


7/27/16

Date

Approved as to Legality and Form

ATTORNEY GENERAL OF NEW JERSEY

By:



RICHARD F. EGELL, DAG

7-21-16

Date

APPENDIX A

SITE DESCRIPTION

RARITAN BAY SLAG SUPERFUND SITE MIDDLESEX COUNTY, NEW JERSEY

The Raritan Bay Slag site is approximately 1.5 miles in length and consists of the waterfront area between Margaret's Creek and the areas just beyond the western jetty at the Cheesequake Creek Inlet. For ease of discussion and reference locations, the Site has been divided into eleven areas. These areas have been grouped into three sectors based on the type of environment and proximity to source areas; sectors include the Seawall Sector (Areas 1, 2, 3, 4, 5, and 6), the Jetty Sector (Areas 7, 8 and 11), and the Margaret's Creek Sector (Area 9). Waves in Raritan Bay flow predominantly from the east and northeast. Thus, contaminants from the Seawall and Margaret's Creek Sectors tend to migrate westward. Currents near the Jetty Sector are complex due to strong tidal currents within Cheesequake Creek. This complicated environment dictates a specific sequencing of cleanup activities to prevent recontamination of remediated areas. The sequencing to prevent recontamination is as follows: the Margaret's Creek Sector; the Seawall Sector; then the Jetty Sector.

The primary sources of contamination are slag from a lead reclamation process and battery casings. The seawall is up to 80 percent slag. Battery casings were found in the upper two inches of depositional zones in Areas 2 and 5. Buried slag was observed in test excavations on the upland side of the seawall in Area 1 and the eastern end of Area 4. The Western Jetty and adjacent areas contain slag and some battery casings. The western side of the Western Jetty and the adjacent shoreline are comprised of 80 to 90 percent slag. The prevailing currents in the vicinity of the Western Jetty promote sediment deposition on the western side of the jetty and transport of sediment into Raritan Bay. Margaret's Creek contains visible slag waste piles in upland areas of Margaret's Creek. Crushed battery casings were also observed scattered in upland areas of Margaret's Creek. No slag or battery casings were observed in the wetland sediment.

On May 23, 2013 EPA issued a Record of Decision (ROD) selecting the final remedy for the Site. The remedy addresses the slag, battery casings, associated wastes, and contaminated and highly impacted soil and sediment. (In the Margaret's Creek sector, the term "sediment" refers to solids that are submerged in water, and the term "soil" refers to solids other than the slag and battery casings and associated wastes that are on dry land.) The final remedy consists of the following major components and subcomponents:

- Remedial Design Investigation: During the remedial design, a pre-design investigation will be performed to define the extent of areas to be addressed in the remedial action. Data collected during the RI and other previously conducted field investigations may be used to ensure the complete removal or excavation of all slag, battery casing/associated wastes and contaminated and highly impacted soils and sediment.

- Removal of All Source Materials and Contaminated Soil and Sediment: Segregation and excavation of slag materials that act as sources of contamination including pieces of slag comingled with crushed battery casing materials and associated wastes. The battery casings and associated wastes are comingled with small pieces of slag. Source materials that are buried in the soil or sediment will be addressed as part of the excavation of soil or sediment, respectively. Contaminated soils including highly impacted soil containing principal threat waste (PTW) will be excavated using standard construction equipment.
- Post-Removal Inspection and Sampling: Inspections will be performed during and after the removal or excavation operations to ensure that no visually observed slag materials or battery casings and associated wastes remain. For soils, post-excavation sampling will be conducted prior to backfill at the excavated areas to verify achievement of the cleanup levels. New Jersey Department of Environmental Protection (NJDEP) Technical Rules require one soil sample per every 900 square feet of excavation floor, and one soil sample per 30 linear feet of each excavation sidewall. For sediment, core sampling and bathymetric surveys will be performed before and after performance of the remedial activities to confirm dredge depth, to document depth profile and to verify the achievement of cleanup levels. Additional surface water monitoring will be performed.
- Surface Water Monitoring: Surface water monitoring will be implemented to ensure the effectiveness of the remedy by achievement of the remedial goals presented in the ROD.
- Transport and Off-Site Disposal of Excavated/Dredged/Removed Materials: All of the contaminated materials at the Site are addressed by off-site disposal. The removed contaminated materials will be transported off-site and placed within one or more permitted off-site disposal facilities specifically authorized by EPA and state regulatory agencies. Stabilization and/or solidification of the source materials may also be performed as needed to satisfy facility disposal requirements. The excavated soil will be disposed of at permitted off-site disposal facilities. Hazardous soil will require treatment to meet the land disposal requirements prior to landfilling. The remaining non-hazardous soil will be disposed of without treatment.
- Restoration of Areas Impacted by Slag and Battery Casings and associated wastes, Excavated Areas and Dredged Areas (as necessary): In the source areas of the Margaret's Creek Sector, backfilling the locations from which slag, battery casings and associated wastes are excavated may be performed if determined to be appropriate. The backfill would be covered with topsoil and revegetated, or otherwise restored to match the surface conditions that existed prior to the removal/excavation operations in the Margaret's Creek area.

APPENDIX B

STATEMENT OF WORK

RARITAN BAY SLAG SUPERFUND SITE

Engineering and construction services necessary to complete Task I of the Contract includes the following elements:

1. Permanent removal of all slag and battery casings and associated wastes;
2. Excavation and/or dredging of highly impacted soil and sediment above the cleanup levels;
3. Surface water monitoring for a limited time following the remedial action to confirm that there are no increased risks due to removal activities and to verify that the remediation goals have been achieved;
4. Disposal of all removed, excavated and/or dredged slag, battery casing and associated wastes, contaminated soil and sediment at appropriate off-site facilities; and
5. Restoration of areas impacted by slag and battery casings and associated wastes, excavated areas and dredged areas, as necessary.

Estimated Cost: \$14,200,000 (Margaret's Creek sector only)

Attachment 1 to Appendix B Payment Schedule Table Superfund State Contract Raritan Bay Slag Superfund Site	
Estimated Contract Costs	State Superfund Contract Task I
Total Construction Cost	\$14,200,000.00
State Share (10%) ¹	\$1,420,000.00
Federal Share (90%)	\$12,780,000.00
Payment Events	
Commitment of Funds for Construction (1%)	\$142,000.00
Award of Construction Contract (4%)	\$568,000.00
“Letter of Acceptance” of Construction Contract (4%)	\$568,000.00
Final Payment or Reimbursement ¹	\$142,000.00

¹ This table shows the schedule for making estimated payments in accordance with Paragraph E.3. to the Contract. The balance of the State’s 10% cost share (be it a final payment by or reimbursement to) is addressed in Paragraph E.3.c.